

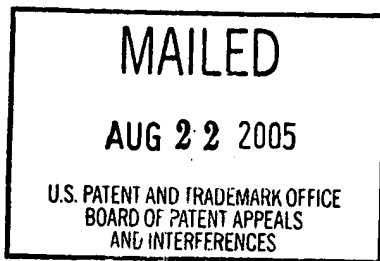
The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KENJI NAGAI

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Appeal No. 2005-2437  
Application No. 09/682,642

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NOTIFICATION OF NON-COMPLIANCE REGARDING ORAL HEARING

Appellant filed a paper styled "Appellant's Request for Oral Hearing" on April 22, 2005, in relation to the present application. However, the paper contains both a oral hearing request and a request to remand the application back to the examiner for additional issues.

As per 37 CFR § 41.47(b) which was in effect at the time of the filing of the Request, a request for an oral hearing must be filed in a separate paper.<sup>1</sup>

Since appellant's request for oral hearing was not filed in a separate paper as required by 37 CFR § 41.47(b), a request for an oral hearing cannot be granted. However, the \$500 fee for the oral hearing which was submitted with the Request, is refundable under 37 CFR § 1.26.

If appellant desires the \$500 fee to be refunded, a request for refund should be filed as soon as possible.

If appellant still desires an oral hearing, a petition under 37 CFR § 1.183 must be filed within two weeks of the mail date of this notice. Such a petition must include:

- (1) a request to suspend the separate paper requirement of 37 CFR § 41.47(b),
- (2) a showing of facts to establish that an extraordinary situation exists and that justice requires the separate paper requirement of 37 CFR § 41.47(b) be suspended or waived, and

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<sup>1</sup> 37 CFR § 41.47(b) provides in pertinent part:


[i]f appellant desires an oral hearing, appellant must file, as a separate paper, captioned "REQUEST FOR ORAL HEARING," a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer or supplemental examiner's answer . (emphasis added)

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(3) be accompanied by the petition fee set forth in 37 CFR § 1.17. This two-week time period for filing a petition under 37 CFR § 1.183 is not extendable under 37 CFR § 1.136(a)(1)(iv). The failure to timely file a petition under 37 CFR § 1.183 will result in the appeal being decided without an oral hearing (i.e., On Brief).<sup>2</sup>

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:

  
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CF/vsh

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<sup>2</sup> If appellants decide not to file a petition under 37 CFR § 1.183, the Board of Patent Appeals and Interferences would appreciate written notice thereof so that the appeal can proceed On Brief as expeditiously as possible.